

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

SIMON ELLOWAY M.D.)

File No. 800-2018-042190

**Physician's and Surgeon's)
Certificate No. G9915)**

Respondent)


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 14, 2019.

IT IS SO ORDERED January 15, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 REBECCA D. WAGNER
Deputy Attorney General
4 State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3760
6 Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

14 **SIMON ELLOWAY, M.D.**
15 **155 North Market Blvd.**
Chehalis, WA 98532

16 **Physician's and Surgeon's Certificate No. G**
17 **9915**

18 Respondent.

Case No. 800-2018-042190

OAH No. 2018080696

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca D.
26 Wagner, Deputy Attorney General.

2. Respondent SIMON ELLOWAY, M.D. (Respondent) is represented in this proceeding by attorney N. Denise Taylor, whose address is: 1000 Wilshire Blvd., Ste. 600 Los Angeles, CA 90017-2463

3. On or about August 11, 1964, the Board issued Physician's and Surgeon's Certificate No. G 9915 to SIMON ELLOWAY, M.D. (Respondent). The Physician's and Surgeon's Certificate is current and will expire on January 31, 2020, unless it is renewed.

JURISDICTION

4. On July 5, 2018, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Board, filed Accusation No. 800-2018-042190 (Accusation) against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 5, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-042190 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-042190. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent agrees that, at an administrative hearing, Complainant could establish a
3 *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-
4 2018-042190.

5 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
6 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
7 Disciplinary Order below.

8 CONTINGENCY

9 11. This stipulation shall be subject to approval by the Medical Board of California.
10 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
11 Board of California may communicate directly with the Board regarding this stipulation and
12 settlement, without notice to or participation by Respondent or his counsel. By signing the
13 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:

25 DISCIPLINARY ORDER

26 A. PUBLIC REPRIMAND

27 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 9915 issued to
28 Respondent SIMON ELLOWAY, M.D. is hereby publicly reprimanded pursuant to California

1 Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in
2 connection with Respondent's actions as set forth in Accusation No. 800-2018-042190, is as
3 follows:

4 On March 1, 2018, the State of Washington Medical Quality Assurance Commission issued
5 a Stipulation to Informal Disposition for Respondent's failure to adequately monitor a patient for
6 signs of dependence and withdrawal, perform regular urine drug screens, perform pill counts, and
7 refer a patient to chemical dependency treatment.

8 B. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the effective
9 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
10 advance by the Board or its designee. Respondent shall provide the approved course provider
11 with any information and documents that the approved course provider may deem pertinent.
12 Respondent shall participate in and successfully complete the classroom component of the course
13 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
14 complete any other component of the course within one (1) year of enrollment. The prescribing
15 practices course shall be at Respondent's expense and shall be in addition to the Continuing
16 Medical Education (CME) requirements for renewal of licensure.

17 A prescribing practices course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later. Failure to enroll,
25 participate in, or successfully complete the prescribing practices course within the designated
26 time period shall constitute unprofessional conduct and grounds for further disciplinary action.

27 In consideration for his agreement to complete the Prescribing Practices course, as set forth
28 above, Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as
set forth above in Paragraph 13(A).

ACCEPTANCE

I, SIMON ELLOWAY, M.D., have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, N. Denise Taylor. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 9915. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

Simon Elloway 11/20/2018
SIMON ELLOWAY, M.D.
Respondent

I have read and fully discussed with Respondent SIMON ELLOWAY, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

11/30/18

N. Denise Taylor
N. DENISE TAYLOR
Attorney for Respondent

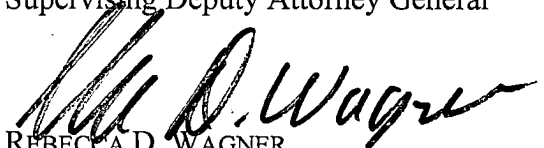
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

1 Dated: 12-3-2018

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 JANE ZACK SIMON
5 Supervising Deputy Attorney General

6 
7 REBECCA D. WAGNER
8 Deputy Attorney General
9 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2018-042190

1. XAVIER BECERRA
Attorney General of California
2. JANE ZACK SIMON
Supervising Deputy Attorney General
3. REBECCA D. WAGNER
Deputy Attorney General
4. State Bar No. 165468
455 Golden Gate Avenue, Suite 11000
5. San Francisco, CA 94102-7004
Telephone: (415) 510-3760
6. Facsimile: (415) 703-5480
E-mail: Rebecca.Wagner@doj.ca.gov

7. *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 5 20 18
BY ANALYST

8. BEFORE THE
9. MEDICAL BOARD OF CALIFORNIA
10. DEPARTMENT OF CONSUMER AFFAIRS
11. STATE OF CALIFORNIA

12. In the Matter of the Accusation Against:

Case No. 800-2018-042190

13. Simon Elloway, M.D.
155 North Market Blvd.
Chehalis, WA 98532

ACCUSATION

14. Physician's and Surgeon's Certificate
No. G 9915,

Respondent.

18. Complainant alleges:

19. PARTIES

20. 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21. capacity as the Executive Director of the Medical Board of California, Department of Consumer
22. Affairs (Board).

23. 2. On or about August 11, 1964, the Medical Board issued Physician's and Surgeon's
24. Certificate Number G 9915 to Simon Elloway, M.D. (Respondent). The Physician's and
25. Surgeon's Certificate expired on January 31, 2018, and has not been renewed.

26. JURISDICTION

27. 3. This Accusation is brought before the Board, under the authority of the following
28. laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2227 of the Code states:

2 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
3 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
4 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
5 action with the board, may, in accordance with the provisions of this chapter:

6 "(1) Have his or her license revoked upon order of the board.

7 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
8 order of the board.

9 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
10 order of the board.

11 "(4) Be publicly reprimanded by the board. The public reprimand may include a
12 requirement that the licensee complete relevant educational courses approved by the board.

13 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
14 the board or an administrative law judge may deem proper.

15 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
16 review or advisory conferences, professional competency examinations, continuing education
17 activities, and cost reimbursement associated therewith that are agreed to with the board and
18 successfully completed by the licensee, or other matters made confidential or privileged by
19 existing law, is deemed public, and shall be made available to the public by the board pursuant to
20 Section 803.1."

21 5. Section 2305 of the Code states:

22 "The revocation, suspension, or other discipline, restriction or limitation imposed by
23 another state upon a license or certificate to practice medicine issued by that state, or the
24 revocation, suspension, or restriction of the authority to practice medicine by any agency of the
25 federal government, that would have been grounds for discipline in California of a licensee under
26 this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action
27 for unprofessional conduct against the licensee in this state."
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9. Respondent's conduct and the action of the State of Washington Medical Quality Assurance Commission as set forth in Paragraphs 7 and 8, above, and within the actual Board documents attached as Exhibit A, constitutes unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).

PRAVER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 9915, issued to Simon Elloway, M.D.;

2. Revoking, suspending or denying approval of Simon Elloway, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Simon Elloway, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: July 5, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2018501099
Elloway.simon.accusation

Exhibit A

State of Washington Medical Quality Assurance Commission
Stipulation to Informal Disposition dated March 1, 2018

**STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

SIMON ELLOWAY, MD
License No. MD00008970

No. M2017-650

**STATEMENT OF ALLEGATIONS
AND SUMMARY OF EVIDENCE**

Respondent.

FILED
MAR 02 2018
Adjudicative Clerk Office

The Executive Director of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in Commission file number 2016-9197. The patient referred to in this Statement of Allegations and Summary of Evidence is identified in the attached Confidential Schedule.

1. ALLEGATIONS

1.1 On August 5, 1964, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active.

1.2 From approximately January 2012 through August 2016, Respondent prescribed methadone, a Schedule II controlled substance, to Patient A. Respondent has served as Patient A's primary care physician for a long period of time prior to initiation of these prescriptions. However, for this time period, Respondent considered Patient A to be an addict and dependent on heroin and methadone.

1.3 Respondent's underlying clinical rationale for the methadone prescriptions to Patient A was for the purpose of detoxification or maintenance.

1.4 Federal administrative rules prohibit the prescription of methadone to "narcotic dependent" patients. Federal rules do allow practitioners to administer or dispense, but not prescribe, methadone to patients, but: 1) only on a daily basis; 2) only in small doses; and 3) only if the practitioner has separately registered with the U.S. Drug Enforcement Agency (DEA). This approach is due to the danger that methadone poses to this patient population due to its long half-life, the tendency of addicted patients to abuse or sell the medication and the risk of death or serious injury due to respiratory depression.

1.5 Prior to his treatment of Patient A, Respondent had never treated a narcotic-dependent patient for addiction and was not registered with the DEA as a drug treatment

ORIGINAL

program. During the period Respondent prescribed methadone to Patient A, Respondent failed to adequately monitor Patient A for signs of dependence and withdrawal.

Respondent did not regularly perform Urine Drug Screens, perform pill counts, or refer Patient A to chemical dependency treatment. In an effort to provide Patient A with "resources to cope" with his addiction, Respondent invited Patient A to attend church with him.

2. SUMMARY OF EVIDENCE

2.1 Respondent's treatment records for Patient A.

2.2 Respondent's statement to the Commission dated January 9, 2017.

3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.180(4) and (7) based on 21 CFR 1306.04 and 21 CFR 1306.07 which provide in relevant part:

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed.

(6) Except when authorized by *RCW 18.130.345, the possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

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21 C.F.R. § 1306.04 Purpose of issue of prescription.

...

(c) A prescription may not be issued for "detoxification treatment" or "maintenance treatment," unless the prescription is for a Schedule III, IV; or V narcotic drug approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment and the practitioner is in compliance with requirements in § 1301.28 of this chapter.

...

21 C.F.R. § 1306.07 Administering or dispensing of narcotic drugs.

(a) A practitioner may administer or dispense directly (but not prescribe) a narcotic drug listed in any schedule to a narcotic dependant person for the purpose of maintenance or detoxification treatment if the practitioner meets both of the following conditions:

(1) The practitioner is separately registered with DEA as a narcotic treatment program.

(2) The practitioner is in compliance with DEA regulations regarding treatment qualifications, security, records, and unsupervised use of the drugs pursuant to the Act.

4. NOTICE TO RESPONDENT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation to Informal Disposition is appropriate, Respondent should sign and date the Stipulation to Informal Disposition and return it within twenty-eight (28) days to the Medical Quality Assurance Commission at P.O. Box 47866, Olympia, Washington 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation to Informal Disposition are appropriate, Respondent should contact Kyle

Karinen, Staff Attorney for the Medical Quality Assurance Commission, P.O. Box 47866, Olympia, Washington 98504-7866, (360) 236-4810 within twenty-eight (28) days.


4.4 If Respondent does not respond within twenty-eight (28) days, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation to Informal Disposition.

4.5 If Respondent declines to resolve the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

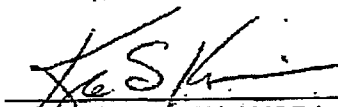
4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

DATED: August 16, 2017.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE
COMMISSION



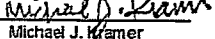
MELANIE DE LEON
EXECUTIVE DIRECTOR



KYLE KARINEN, WSBA #34910
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health.

Medical Quality Assurance Commission


Michael J. Kramer

3-30-18

Date



CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named herein. RCW 42.56.240(1)

Patient A

ORIGINAL

**STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

SIMON ELLOWAY, MD
License No. MD00008970

No. M2017-650

**STIPULATION TO INFORMAL
DISPOSITION**

Respondent.

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.

1. ALLEGATIONS

1.1 On August 5, 1964, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active.

1.2 From approximately January 2012 through August 2016, Respondent prescribed methadone, a Schedule II controlled substance, to Patient A. Respondent has served as Patient A's primary care physician for a long period of time prior to initiation of these prescriptions. However, for this time period, Respondent considered Patient A to be an addict and dependent on heroin and methadone.

1.3 Respondent's underlying clinical rationale for the methadone prescriptions to Patient A was for the purpose of detoxification or maintenance.

1.4 Federal administrative rules prohibit the prescription of methadone to "narcotic dependent" patients. Federal rules do allow practitioners to administer or dispense, but not prescribe, methadone to patients, but: 1) only on a daily basis; 2) only in small doses; and 3) only if the practitioner has separately registered with the U.S. Drug Enforcement Agency (DEA). This approach is due to the danger that methadone poses to this patient population due to its long half-life, the tendency of addicted

patients to abuse or sell the medication and the risk of death or serious injury due to respiratory depression.

1.5 Prior to his treatment of Patient A, Respondent had never treated a narcotic-dependent patient for addiction and was not registered with the DEA as a drug treatment program. During the period Respondent prescribed methadone to Patient A, Respondent failed to adequately monitor Patient A for signs of dependence and withdrawal. Respondent did not regularly perform Urine Drug Screens, perform pill counts, or refer Patient A to chemical dependency treatment. In an effort to provide Patient A with "resources to cope" with his addiction, Respondent invited Patient A to attend church with him.

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4) and (7) based on 21 CFR 1306.04 and 21 CFR 1306.07.

2.2 The parties wish to resolve this matter by means of a Stipulation pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health web site, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

2.8 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms:

3.1 **Compliance Orientation.** Respondent shall complete a compliance orientation in person or by telephone within sixty (60) days of the effective date of this Stipulation. Respondent must contact the Compliance Unit at the Commission by calling (360) 236-2763, or by sending an email to: Medical.compliance@doh.wa.gov within twenty (20) days of the effective date of this Stipulation. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

3.2 **Opioid Prescribing CME.** Within six (6) months of the effective date of this Stipulation, Respondent shall complete an intensive course in the safe prescribing of opioid medications. The course must be approved in advance by the Commission's designee. Pre-approval may be obtained by contacting the compliance unit using the contact information in Paragraph 3.1. The following courses are pre-approved:

A. "Physician Prescribing Course" by Physician Assessment and Clinical Education Program (PACE), University of California at San Diego, 1899 McKee Street #126, San Diego, CA 92110; <http://paceprogram.ucsd.edu/CPD/prescribing.aspx>

B. "Opioids, Pain Management, and Addiction" by Professional Boundaries, Inc. (PBI), various location;
https://professionalboundaries.com/prescribing_course.php

C. "Prescribing Controlled Drugs" the Center for Personalized Education for Physicians (CPEP) offering the course developed at the Vanderbilt University School of Medicine, 720 S. Colorado Blvd., Suite 1100-N, Denver, CO 80246.

3.3 **Paper.** Within thirty (30) days of completion of the opioid prescribing CME required under Paragraph 3.2, Respondent shall submit a typewritten paper of no less than one thousand (1,000) words regarding what he learned from the course and

how he will apply this information in his practice moving forward. Respondent should be prepared to discuss the subject matter of the written paper with the Commission at his initial personal appearance: The paper shall be submitted to the Commission, in both electronic and printed format, to the addresses below:

1. Medical.compliance@doh.wa.gov

2. Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

3.4 **Personal Appearances.** Respondent must personally appear at a date and location determined by the Commission within approximately six (6) months after the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits. Thereafter, Respondent must make personal appearances annually or as frequently as the Commission requires unless the Commission waives the need for an appearance. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to the appearance. The purpose of appearances is to provide meaningful oversight over Respondent's compliance with the requirements of this Stipulation. The Commission shall provide reasonable notice of all scheduled appearances.

3.5 **Restriction on Treatment of Patients.** During the period of time during which Respondent must personally appear before the Commission:

A. Except as provided below in Paragraph 3.5(B), Respondent shall not treat patients with opiates for chronic noncancer pain¹ or addiction and shall be required to refer these patients to a specialist.

B. Respondent may continue to treat chronic noncancer pain patients from his practice as of the effective date of this Stipulation that are over the age of 65 and receiving less than a 30 morphine equivalent dose (MED) daily.

¹ "Chronic noncancer pain" is defined by Commission rule as: "means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years." WAC 246-919-852(3).

Respondent acknowledges that the Commission shall monitor his compliance with the conditions of this Paragraph through the Washington State Prescription Monitoring Program.

3.6 **Boundaries/Ethics Course.** Within six (6) months of the effective date of this Stipulation, Respondent shall successfully complete an intensive course, approved in advance by the Commission or its designee, in medical ethics and boundaries. The following courses are pre-approved: (a) the ProBE course offered by the Center for Personalized Education for Physicians (CPEP) in Denver, CO (Respondent must obtain an "unconditional pass"); (b) the course in physician ethics and boundaries through the Center for Professional Health at Vanderbilt University Medical Center in Nashville, Tennessee; (c) the Professional Boundaries Program at the University of California San Diego, PACE Program; and (d) the PBI Professional Boundaries Course at the University of California-Irvine. Respondent will submit proof of the satisfactory completion of the course to the Commission within thirty (30) days of completion. If the course requires Respondent to complete a written report, Respondent will ensure that the Commission receives a copy of Respondent's written report. If the course instructors inform the Commission that Respondent did not satisfactorily complete the course, the Commission may require Respondent to re-take the course or to take another course.

3.7 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

3.8 **Costs.** Respondent must assume all costs that Respondent incurs in complying with this Stipulation.

3.9 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.10 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing of changes in his residential and/or business address within thirty (30) days of such change.

3.11 **Effective Date.** The effective date of this Stipulation is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.12 Termination of Stipulation. Respondent may petition the Commission in writing to terminate this Stipulation after three (3) years from its effective date. Upon a written petition to terminate, Respondent shall appear in person before the Commission at a date and location designated by the Commission. An appearance on a petition to terminate may be combined with a required annual personal appearance. The Commission shall have full discretion to grant or deny the petition. If the Commission denies the petition, Respondent may petition again annually or at an interval otherwise determined by the Commission.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal disposition under RCW 18.130.172. Tier B of the "Practice Below Standard of Care", WAC 246-16-810, applies to cases where substandard practices resulted in moderate patient harm. Respondent's care of Patient A did not cause severe harm or death, but caused moderate harm or risk of severe or moderate harm in that it resulted in Patient A not receiving appropriate care for his addiction. Therefore Tier B applies.

4.2 Tier B requires the imposition of sanctions ranging from two years of oversight to five years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.3 While the ultimate duration of this Stipulation is undetermined – giving the Commission the discretion to lengthen the period of oversight if protection of public health and safety requires – it may be terminated after three years. This places the duration slightly toward the lower end of the sanction range. Here, the Commission has noted the Respondent's cooperation with the Commission's investigation as well as the fact this was a single patient and was not a pattern throughout Respondent's practice. These mitigating factors warrant a slightly shorter period of oversight.

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5. RESPONDENT'S ACCEPTANCE

I, Simon Elloway, MD, Respondent, certify that I have read this Stipulation in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation, I understand that I will receive a signed copy.

Simon Elloway, MD
SIMON ELLOWAY, MD
RESPONDENT

9-1-2018
DATE

WSBA# 34910
ATTORNEY FOR RESPONDENT

DATE

6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation. All parties shall be bound by its terms and conditions.

DATED: 1 March, 2018

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

PM Roberts
PANEL CHAIR

PRESENTED BY:

KSK
KYLE KARINEN, WSBA #34910
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health,
Medical Quality Assurance Commission

Michael J. Kramer
Michael J. Kramer

3-30-18
Date

STIPULATION TO INFORMAL DISPOSITION
NO. M2017-650

ORIGINAL

